

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:19-CV-221-BO

M.D. RUSSELL CONSTRUCTION, INC.,)
Plaintiff,)
v.)
CONSOLIDATED STAFFING, INC.,)
Defendant.)


ORDER

This cause comes before the Court on a motion for attorney fees filed by defendant Consolidated Staffing. [DE 106]. Also pending before the Clerk of Court is an application for costs. [DE 105]. The appropriate responses and replies have been filed, and the matters are ripe for ruling.

On April 19, 2022, plaintiff noticed an appeal of this Court's judgment entered following its order granting Consolidated Staffing's motion for summary judgment. [DE 103 & 104]. If an appeal of the merits of an action is taken and a motion for attorney fees is pending, a district court may rule on the motion for attorney fees, defer its ruling, or deny the motion without prejudice and direct that it be refiled after resolution of the appeal. Fed. R. Civ. P. 54(d) advisory committee's note (1993 amendment); *see also Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004). A district court may prefer to defer consideration of a motion for attorney fees until the appeal has been resolved where the fee claim either involves substantial issues or is likely to be affected by the court of appeals' decision. *Certusview Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2015 WL 3466842, at *2 (E.D. Va. June 1, 2015) (citing Fed. R. Civ. P. 58 advisory committee's notes (1993 amendments)).

The Court in its discretion DENIES the motion for attorney fees and application for costs [DE 105 & 106] WITHOUT PREJUDICE to refiling at the conclusion of the appeal. If appropriate, Consolidated Staffing may refile its motion and application within fourteen (14) days of the entry of the mandate of the court of appeals. The parties may further incorporate their previously filed motion, application, and briefing by reference. The motion for leave to file excess pages [DE 114] is also DENIED WITHOUT PREJUDICE.

SO ORDERED, this 29 day of August 2022.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE